

## Employee Workplace Harassment Prevention Toolkit:

YOUR GUIDE TO PREVENTING AND IDENTIFYING HARASSMENT IN THE WORKPLACE

Question:	Answer:
<b>What is harassment?</b>	This is a legally defined term. It means unwelcome verbal or physical conduct that denigrates, shows hostility or aversion toward an individual based on any characteristic protected by law, which includes race, color, religion, sex (including gender identity, sex stereo-typing, transgender status and pregnancy), national origin, age (40 and older), disability, genetic information, sexual orientation, parental status, marital status, political affiliation, military service, <b>or</b> retaliation.
<b>What constitutes the basis of retaliation when alleging harassment?</b>	Anti-discrimination laws prohibit harassment of an individual in retaliation against an employee who has: filed a discrimination complaint, testified, assisted or participated in any manner in an investigation, proceeding, hearing or litigation under governing EEOC statutes, oppose employment practices they believe to discriminate, or requested a reasonable accommodation.
<b>What is unlawful harassment?</b>	Harassment becomes unlawful where <ol style="list-style-type: none"> <li>1) Enduring the offensive conduct becomes a condition of continued employment, or</li> <li>2) The conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.</li> </ol>
<b>What are the two basic types of unlawful harassment?</b>	Quid Pro Quo Harassment- “This for That” and Hostile Work Environment Harassment
<b>What is Quid Pro Quo Harassment?</b>	Quid Pro Quo harassment occurs when a <i>tangible employment action</i> is made based on the employee’s submission to or rejection of unwelcome conduct. This kind of harassment is generally committed by a supervisor or someone who can make or recommend formal employment decisions that will affect the victim.
<b>What is a tangible employment action?</b>	A tangible employment action involves a significant change in status, e.g., change in pay, work status, dismissal, demotion, hire, failure to promote, transfer, undesirable reassignment, and work assignments.

<b>What is Hostile Work Environment Harassment?</b>	Legally defined, a hostile work environment can result from the unwelcome conduct of supervisors, co-workers, customers, contractors, or anyone else with whom the victim interacts on the job, and the unwelcome conduct is so severe or pervasive that it renders the workplace atmosphere intimidating, hostile, or offensive to a reasonable person.
<b>What are some examples of behaviors that may contribute to hostile work environment harassment?</b>	Examples of behaviors may include, but are not limited to: Telling off color or offensive jokes concerning race, age, national origin, sex(including gender identity, sex stereotyping, transgender status and pregnancy), disability, color or other protected bases; derogatory comments about mental or physical impairments; discussing sexual activities; unnecessary touching; commenting on physical attributes; displaying racially insensitive or sexually suggestive pictures or objects; using demeaning or inappropriate terms or epithets; ridicule or mockery; using indecent gestures; name calling; using crude language; sabotaging the victim's work; engaging in hostile physical contact.
<b>What determines if the harassing conduct is severe or pervasive?</b>	Whether an instance or a pattern of harassing conduct is <i>severe or pervasive</i> is determined on a <u>case-by-case basis</u> , with consideration paid to the following factors: <ol style="list-style-type: none"> <li>1. the frequency of the unwelcome discriminatory conduct;</li> <li>2. the severity of the conduct;</li> <li>3. whether the conduct was physically threatening or humiliating, or a mere offensive utterance;</li> <li>4. whether the conduct unreasonable interfered with work performance;</li> <li>5. the effect on the employee's psychological well-being; and</li> <li>6. whether the harasser was a superior within the organization.</li> </ol> Each factor is considered, but none are required or dispositive.
<b>What law(s) are violated by harassment?</b>	Harassment is a form of employment discrimination that violates Title VII of the Civil Rights Act of 1964, The Age Discrimination in Employment Act of 1967, (ADEA), The Americans with Disabilities Act of 1990, (ADA), and The Genetic Information and Non-Discrimination Act of 2008, (GINA) for EEO protected categories under the law. Moreover, consistent with Presidential Executive Orders and other laws, such as, Executive Order 11478, Civil Service Reform Act, The Notification And Federal Antidiscrimination and Retaliation Act,(No FEAR), Whistleblower Protection Enhancement Act, and Uniformed Services Employment and Reemployment Rights Act, (USERRA), federal employees are protected from harassment based on other legally protected categories.

<b>What do you do if you witness or are subjected to harassment?</b>	<ol style="list-style-type: none"> <li>1. An employee who witnesses or believes that he or she has been made the target of harassment should report the harassment, as soon as possible, to a managing official.</li> <li>2. An employee may initiate the administrative inquiry process by contacting a supervisor who will conduct an investigation intended to gather information to determine what action, if any, should be taken. This information is not intended for legal or criminal prosecution.</li> <li>3. If the employee feels comfortable contacting the harasser he or she should inform the harasser that the conduct is unwelcome and must stop immediately.</li> <li>4. Employees should also maintain a record of relevant events and communications between all parties involved, in the event another incident arises and further action is needed.</li> </ol>
<b>Is an employee who brings a harassment claim protected from retaliation/ reprisal?</b>	Yes. The NIH is committed to promoting and maintaining a work environment free from discrimination and retaliation. Reprisal for participation in the EEO process is prohibited. If an employee wishes to file an EEO complaint of reprisal he or she may contact the Office of Equity, Diversity and Inclusion within 45 calendar days of the alleged occurrence(s) of retaliation discrimination.
<b>Is there discipline for engaging in unlawful harassment?</b>	The consequences for engaging in unlawful harassment may include discipline up to and including removal from federal service.

### Workplace Harassment Videos:

WATCH: ["Flashpoint"](#)

Area:	Key Points:
<b>Employee</b>	<ul style="list-style-type: none"> <li>• Ensure that your conduct is not inappropriate or offensive to other employees, job applicants, contractors, visitors or any other person directly associated with the performance of your official duty.</li> <li>• Assist NIH in its efforts to prevent and eliminate a hostile and offensive work environment.</li> </ul>

<b>Victim</b>	<ul style="list-style-type: none"> <li>The victim should notify a supervisor, management official, or EEO representative of harassment because an Agency cannot correct harassing conduct if a supervisor, manager, or other Agency official does not become aware of it.</li> <li>The victim does not have to be the person harassed but could be anyone affected by the offensive conduct.</li> </ul>
<b>Harasser(s)</b>	<ul style="list-style-type: none"> <li>The harasser(s) can be the victim's supervisor, a supervisor in another area, a co-worker, an agent of the NIH, another NIH employee, or a non-employee who has a business relationship with the NIH.</li> </ul>
<b>Action(s)</b>	<ul style="list-style-type: none"> <li>Unlawful harassment may occur without economic injury to or discharge of the victim.</li> <li>The harasser's conduct must be unwelcome.</li> <li>The unwelcome conduct must be severe or pervasive under a reasonable person standard</li> <li>NIH has the legal right to perform administrative inquiries based on the right to manage the workforce and respond to allegations of sexual harassment, and incidents of misconduct which may lead to disciplinary action.</li> </ul>

### Case Examples:

Addresses:	Case:
Agency took prompt remedial action-noose in workplace	<a href="#"><i>Posey v. United States Postal Service</i></a>
Agency took appropriate action- racially charged comment	<a href="#"><i>Nicholas v. Department of Agriculture</i></a>
Agency failed to take prompt and effective remedial action-sexual harassment	<a href="#"><i>Miller v. Department of Veterans Affairs</i></a>
Agency failed to take appropriate action-raced based harassment of manager	<a href="#"><i>Richardson v. Department of Homeland Security</i></a>

Agency failed to take appropriate action-raced based harassment of supervisory nurse by staff	<a href="#"><i>Menard v. Department of Veterans Affairs</i></a>
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### **Contacts:**

WHO TO ASK ABOUT WHAT

[Division of Complaints Management and Resolution](#)

[Identify Your Formal Complaints Specialist](#)

[Office of Equal Opportunity and Diversity Management contact](#)

[NIH Ombudsman contact](#)

### **Resources:**

WHERE TO GO FOR MORE INFORMATION

[Title VII of the Civil Rights Act of 1964](#)

[29 C.F.R. Section 1604.11](#)

[EEOC Facts about Harassment](#)

[EEOC Facts about National Origin and Religious Harassment](#)

[EEOC cases involving Racial Harassment since 2009](#)

[U.S. Department of Labor, Veterans Employment & Training Service \(DOL-VETS\)](#)

[Office of Special Counsel](#)

[USERRA Complaint Form](#)

[NIH Procedures for Handling Allegations of Sexual Harassment](#)

[Facts about Discrimination in Federal Government Employment Based on Marital](#)

[Status, Political Affiliation, Status as a Parent, Sexual Orientation, or Transgender](#)

[\(Gender Identity\) Status](#)